Supreme Court, U.S.
FILED
APR 5 1991
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(2)

90 - 1654

No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

RAWLEY PATTON,

Petitioner,

v.

CHARLES C. VARDELL; F.M. (MIKE) SPEARMAN;
WILLIAM T. SMITH, Judge;
JOHN DOUDOUKJIAN, Deputy;
LEROY GATSON, Deputy,

Respondents.

APPENDIX PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Rawley Patton, Pro Se
114 Horseshoe Circle
Columbia, S.C. 29223
(803) 788-3128

INDEX TO APPENDIXES OF PETITION FOR A WRIT OF CERTIORARI, THAT RAWLEY PATTON, PETITIONER FILED (POSTMARKED) APRIL 5, 1991

APPENDIX A: Magistrate's Report and Recommendation adopted by the District Court of South Carolina, Columbia Division.

APPENDIX B: Opinion of United States Court of Appeals for the Fourth Circuit.

APPENDIX C: Supreme Court of the United States, extended the time for filing a Petition for a Writ of Certiorari, till May 8, 1991.

APPENDIX A

IN THE UNITED STATES COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Rawley Patton, Plaintiff, vs. Charles C. Vardell, F.M. "Mike" Spearman Judge William T. Smith, Deputy John Doudoukjian, Deputy Leroy Gadsen, and others involved in the conspiracy against the plaintiff, each in their individual capacities. Defendant.	CA No. 3:89-2280-6B COMPLAINT Under: Title 18 USC 241-242, and 42 USC 1331 JURY TRIAL DEMANDED Original Filed September 13, 1989 Ann A. Birch Clerk, Columbia, SC

A complaint was filed in this matter on September 13, 1989. Rawley Patton was the plaintiff. He sued the defendants named above and others involved in a conspiracy. He sued pursuant to Civil Rights statutes, primarily.

The plaintiff alleged that under color of state law, which was never denied, his constitutional rights were violated. The Complaint was verified.

Patton alleged that public officers had improperly trespassed upon his property; that he had his property confiscated, under color of law by the defendants.

The plaintiff alleged that the defendants did violate due process in that they knowingly, intentionally and wilfully served eight repetitive, and duplicative warrants that were not substantiated by any probable cause. Defendants served these warrants when there had been no crime and no measurable damages and no corpus delicta. Patton alleged that they served these eight warrants all of them were repetitious and

a malicious abuse of process and an act of malicious prosecution for the sole purpose of obtaining a higher surety bond from the plaintiff at the time of his arrest, even if any one had merit. He alleged that, for one alleged offense, they had caused him to pay eight times the $400 per warrant bond, thereby requiring a $3,200 bond prior to release from prison, rather than the proper $400 price.

The plaintiff alleged further that his due process rights were violated in that the defendants had entered his property during the night time on August 30, 1989, and kidnapped the plaintiff, taking him in handcuffs, without reading him his Miranda rights and without any probably cause on a matter that was identical to that previously adjudicated

in 1988 so that double jeopardy attached, and while the matter that was still in litigation in the South Carolina courts. The plaintiff alleged that this was part of a continual harassment of him under color of state law, with intimidation and defiance of the plaintiff's rights.

The plaintiff alleged that the defendants confiscated and trespassed upon his personal property rights. They charged him with an alleged crime for not having license tags and state inspection stickers on personal property (ie. vehicles) which are not used on the public highways and are for the sole purpose of his domestic labor in his own domain and for his pleasure and happiness. He alleged that Warrant C-464746, C-464749, C-464751, and C464754 all charged the same crime and were part

of a malicious abuse of process and beyond the scope and authority of law.

The plaintiff alleged that the defendants were acting beyond the scope of any authority that they had and they were acting contrary to South Carolina law.

The plaintiff alleged that the defendants, as individual, acted in a conspiracy, and attempted as a constructive fraud to usurp the private property rights of plaintiff under color of law and under coercion and duress, and under threat of criminal penalty. They sought to take away his property without paying just compensation, as well as invade his privacy and interfere with his Constitutional rights.

The plaintiff alleged that the defendants, in the process of serving

these eight illegal warrants, wilfully, knowingly and intentionally entered the plaintiff's home and interfered with his video camera picture taking of their activities, trying to destroy vital evidence of their false arrest and their activities.

The plaintiff further alleged that he was subjected to an illegal court in South Carolina, as the state's Magistrate court and that he consistently had his constitutional rights violated before the state court and the court refused to allow a jury to consider his claim that his Constitutional rights were being violated by the local county zoning ordinance.

The plaintiff requested, by way of relief, monetary compensation for damages for headache, troubles, false arrest,

mental anguish, intimidation, harassment, false imprisonment, deprivation of civil rights, liberties and immunities, malicious and selective prosecution, malicious abuse of process, and conspiracy all before a jury. The plaintiff further sought injunctive relief, removal of the state action to federal court, punitive damages and other relief. The Complaint was verified and the defendants never attempted in any manner to meet the matters set forth or to clarify factually the exhibits set forth in this Complaint.

A Request for Temporary Restraining Order was further served on or about September 13, 1989.

Pertinent facts that were revealed therein were that the Plaintiff has consistently utilized his property in the

present manner since 1952, preceding any zoning laws. The defendants were threatening to serve 8 to 10 arrest warrants a week. The plaintiff alleges in paragraph 5 of his Application for Injunctive Relief, and specific facts that showed that the state court proceedings were becoming a circus.

The plaintiff alleged that even though he has lung problems, he was imprisoned in dangerous conditions and he was treated improperly in prison.

It is interesting to note that the defendants filed an answer on October 6, 1989. They did not initially deny a single allegation of the Complaint and all the allegations of the amended Complaint. The defendants raise several defenses:

(1) That there was no claim for relief

stated:

(2) That the federal questions are frivolous and unsubstantial;

(3) That there is no civil rights action alleged because no Constitutional rights have been violated;

(4) As a rather unusual separate defense, there is a belated and vague specific denial of allegations clearly in bad faith since many of the facts are verified by subsequent affidavits filed by the defendant as a blatant violation of Federal Rule of Civil Procedure No. 11;

(5) That there is immunity for civil rights violations which is clearly not true;

(6) That there is immunity for officers under the 11th Amendment which is clearly not the law;

(7) That the defendants are immune because they are acting in good faith which is clearly not the law;

(8) That the defendants are immune because they did not act maliciously or under corrupt motive which is clearly not the law;

(9) That there is immunity because they were following specific laws which is clearly not a defense; and

(10) That they have immunity because they were acting in their official duties.

The answer is a study in clear violations of Federal Rule 11. Defenses are raised that are untrue or clearly not defenses at law.

On the same date, October 6, 1989, the defendants filed a Motion for Summary Judgment. The motion did not specify the

basis of the claim of summary judgment. Rather, it was accompanied by Memorandum that claimed summary judgement was appropriate because of passage of a zoning ordinance, 25 years after the plaintiff's long recognized rights to the use of his property. Defendants argued this subsequent zoning enactment had no obligation to grandfather any pre-existing or non-conforming uses for the business of restoring and maintaining antique cars. In fact, the Motion was totally silent about discussing plaintiff's non-conforming uses, and did not even mention antique car businesses at all. In fact the Court never even considered the zoning ordinance nor was it presented to the Court. Nothing!

The defendants claimed that Section 2-2.5 of the Zoning Ordinance had various

enforcement provisions but showed no connection to the plaintiff, save by inadmissable conclusion. It is glaringly noteworthy that the zoning ordinance was never produced. The Magistrate was guessing at what he thought the zoning ordinance was. He accepted solely what defense counsel had put in his memorandum by way of conclusion.

In any event, the defendants claimed that the plaintiff's antique car business work fell under the category of junk, salvage, scrap or wrecking yards, without proof, evidence or logic. There was no absolutely no showing in any way that the plaintiff was in violation of the zoning ordinance. Rather, has an exercise of total illogic, the defendants' brief simply states that there is an ordinance, that having a wrecking yard is illegal,

and that various officers sought to prosecute Rawley Patton without any suggestion that his 20 year antique car business was a junk yard, or wrecking yard, or in any way intended to be with the ordinance that was totally missing!

The record is devoid of any showing of any violation of law by Rawley Patton. Rather, the record was replete with Constitutional violations by defendants.

The record is devoid of any showing that Rawley Patton's antique automobile collection, that he was lawfully using for 25 years prior to the zoning ordinance, in any way constituted junk. Mr. Patton's claims clearly showed that they were not junk, but were rather valuable antiques.

Various affidavits were filed. For example, William T. Smith filed an

affidavit as Magistrate for Richland County. Rather than state facts, his affidavit is filled with conclusionary matters and matters that were inadmissable, i.e. "Affiant understands that Rawley Patton attempted to further appeal his conviction to the Supreme Court of South Carolina and that said appeal was similarly dismissed," "On or about August 25, 1989, Charles Vardell and Mike Spearman, known to the affiant to be co-enforcement officers of Richland County satisfied affiant that probable cause existed,"without indicating what the crime or what the facts were that were shown. "That further violations were shown on August 28, 1989 without any showing that these weren't the identical violations being prosecuted." " That affiant did not set bond for Rawley

Patton but understands that the same was set by a Magistrate Womble." That proceedings "have at all times been just and appropriate.: This affidavit is a travesty from a judicial officer; it denies admissible evidence. In fact, there is not even a shred of evidence that anyone ever looked at the zoning ordinance; that anyone ever knew what the charges were against Rawley Patton; that anyone ever showed that there was junk on his property as opposed to antique cars, or that anyone in the State of South Carolina were concerned with due process of law. Never did they address their refusal to give him any hearing on his property right deprivations.

As an example, one of the exhibits presented, Exhibit 6, showed that the violation charged was against Section

7-1.4(6) of the Richland County Ordinance which states:

> "Automotive vehicles or trailers of any kind or type without current license plates and current inspections stickers, if applicable shall not be parked on any residentially zoned property, other than in completely enclosed buildings."

There is no showing that antique cars being worked on were "parked" or were even considered part of the automotive vehicles that were contemplated. Nor was there any consideration of the fact that Mr. Patton had a 25-year-long vested property interest in the continuation of the uses of his property he had made since 1952 when the 1977 ordinance was amended.

Mr. Patton clearly filed a number of documents expressing his lack of sophistication or familiarity with legal

niceties, but his total instinct for justice that was being violated.

Most noteworthy was the fact that the only notice Mr. Patton got of the December 1, 1989 hearing specified, by order of Stacy S. Wilson for Anne A. Birch, Clerk of the Court, that there was to be a status conference. The status conference turned out to be an ambush by a clearly partisan and adversarial Magistrate who refused to consider the matters presented by Mr. Patton and more importantly, refused to consider the total gaping holes in the Motion for Summary Judgment.

On November 15, 1989, Rawley Patton had submitted a sworn affirmation containing further facts, even recognizing that the sworn Complaint had never even been challenged by the Motion

for Summary Judgment.

The Magistrate ignored the fact and the document affirmed by Rawley Patton on November 14, 1989, that Charles C. Vardell had admitted he didn't know if there was any Complaint against Rawley Patton. Patton showed other glaring contradictions in Vardell's testimony. Patton points out that he was grandfathered in the usage that he had been making since 1952. The judge totally ignored the fact that there had been eight additional warrants issued for the very same alleged crime that was in the process of being adjudicated in South Carolina courts.

The Magistrate totally ignored that William T. Smith filed an affidavit saying that he was elected a Magistrate contrary to the showing that he was only

appointed a Magistrate.

The Magistrate ignored the clear due process violations on a zoning enforcement order of going to Patton's house, the home of an elderly couple, and arresting them in the middle of the night as admitted by John Doudoukjian. The Magistrate ignored John Doudoujian's conclusions that admission was voluntarily granted while noting that Patton was videotaping the procedures which would show the contrary. The Magistrate allowed such self-serving conclusions by the sheriff's deputy that they "conducted themselves in an appropriate and proper manner" and ignored the contrary evidence presented by the plaintiff.

The Magistrate ignored the admissions by Leroy Gadson that he had

interfered with the plaintiff's videotaping events on his own property and allowed the self-serving conclusion that he was granted admittance into the residence while the plaintiff clearly showed to the contrary. The Magistrate allowed the F.M. Spearman conclusions that there were zoning violations and ignored the fact that the state officers were attempting to change valuable antique automobiles into junk and the junk was all the zoning ordinance could enforce. The Magistrate ignored the fact that the premises were heavily posted against trespassing and claimed that the barging in by the officers was a voluntary admittance. Most glaring was the Charles C. Vardell affidavit, contradicting the others and claiming that the violations were for "possession

of unlicensed motor vehicles" when the very ordinance cited was shown to only cover the requirement of licenses when required. There was never any showing that the storage and maintenance of antique automobiles not used on the road ever required licenses. In short, the defendants showing was a total travesty, without logic, without admissible evidence, and in no way meeting the allegations of the Complaint.

A review of the transcript of the Magistrate reveals heightened abuse of any form of judicial discretion. The Magistrate acted in a totally partisan manner. The Magistrate attempted to set up what is known as a "straw man" by attempting to euchre Rawley Patton into stating that he thought that all zoning ordinances were unconstitutional. The

Magistrate ignored the gist of his Complaint and attempted to quote Rawley Patton as saying that the gist of his Complaint was far more limited than shown.

The essence of Rawley Patton's complaint was the attempt to interfere with the grandfathering of an antique car storage facility by the mere magic wand of calling these valuable antique cars "junk". There was never evidence, testimony nor logic in making that transition. A further gist of the Complaint was a showing of tremendous abuse of state power by repetitive complaints, terrorist tactics and abuse of an elderly citizen in the exercise of the protection of his property rights.

Thereafter, an improper standard on the Motion for Summary Judgement was

adopted by order of the Magistrate. On October 12, 1989, he ruled that if the plaintiff fails to adequately respond to the Summary Judgement, within 34 days the Motion would be granted, thereby changing the burden of proof. The Magistrate did not examine the total inadequacy of the Motion for Summary Judgement. In the guise of following the fairness of adequate notice to a pro se litigant, the Magistrate changed the entire balance of the burden of moving and procuring a Summary Judgement.

The plaintiff was not eloquent in his defense. This does not justify the Magistrate's failure to act fairly and impartially in the case.

The plaintiff did make the point that he had been utilizing this property for the purposes of restoring antique

cars (and never as a junk yard) and the defendants were effectively taking his property from him without just compensation. The plaintiff made the further point that concerting this zoning dispute, the defendants were unfairly abusing criminal mandates and statues in order to bring about their cause. It is noted that the defendants never brought a civil action nor did they ever bring a zoning action of any kind, but rather proceeded only under the false assumptions that the criminals statutes were the proper way to go and under the further false assumption that "parking" of automobiles properly adjudicated a case of a 38-year usage, 25 of which was without any zoning ordinance, of premises for restoration of antique automobiles.

The Magistrate did not deal and

ignored, out of hand, the various miscarriages of justice and denial of due process that were perpetrated against the plaintiff in protection of his property rights. These included late night arrests, allegations that were never counted of a kangaroo court, rulings that were unfair, the use of eight criminal arrest warrants were clearly repetitious and without probable cause, and the abuse of the South Carolina courts by government on behalf of government against property rights.

The court totally ignored and failed to have a hearing on the clear conflict of testimony that the South Carolina courts by government on behalf of government against property rights.

The court totally ignored and failed to have a hearing on the clear conflict

of testimony that the South Carolina courts had no jurisdiction to try the plaintiff in Magistrate's court, and that due process of law was clearly violated by the defendants. The witness, Andrew Melechinsky, also pointed out that various articles of the South Carolina Constitution were being ignored.

The Magistrate clearly ignored the proof as follows:

(1) That plaintiff owned his property and utilized the same as such for many years before any ordinance;

(2) That the only notice plaintiff would ever receive was to remove "unlicensed vehicles" under circumstances where it was very clear that the antique vehicles being restored required no license since they were not utilized on the

road;

(3) That the plaintiff received a show cause order and requested a hearing and was refused to be given any hearing on this clear matter of adjudication of property rights, as an obvious violation of due process of law;

(4) That plaintiff, on December 3, 1987, received an adjudication that he was in violation of the zoning law without ever having due process of law to adjudicate his rights;

(5) On January 18, 1988, plaintiff received a show cause order, having twice demanded a hearing and with no hearing as to why he should not be subject to a restraining order to allow the persons to come on his property without any Fourth

Amendment compliance;

(6) On January 27, 1988, the defendants executed against plaintiff a clearly illegal arrest warrant without the court ever getting any explanation as to how a warrant dated in the future could be executed at a time prior to the effective date;

(7) On April 5, 1988, plaintiff was convicted in Magistrate's court without being allowed to read to the jury the basis of his defense by way of Constitutional guarantees;

(8) On April 5, 1988, plaintiff was denied his ordinary appeal rights that allowed ten days to appeal;

(9) Plaintiff was not allowed a transcript of the Magistrate's hearing and a full transcript was not kept;

(10) At the time of the appeal, the court refused to allow a stenographic transcript be taken by plaintiff of the proceedings;

(11) Throughout all the proceedings in the South Carolina court, not one court would make mention or allow mention of the Constitutional guarantees of the Federal Constitution and for that reason, brought this action;

(12) The plaintiff showed, without equivocation, that each of the affidavits filed on behalf of the defendants' Summary Judgement was false;

(13) Especially, plaintiff showed that the sheriff's entry in the home was illegal, without permission and contrary to prior advice that they

were not welcome, under circumstances where there was absolutely no justification for the late night invasion of plaintiff's home.

Thereafter, the Magistrate made a report and recommendation to dismiss this case. This report and recommendation clearly did not give any care or attention to the issues raised by the plaintiff even though they were admittedly raised in laymen's fashion. Despite the lack of eloquence and lack of intellectual superiority in the manner in which plaintiff presented these arguments, it was very clear that the plaintiff alone in the proceedings, and neither the Magistrate nor the defendants had a firm respect and appreciation for our system of justice, a trust in its

adjudication facilities, and a lack of cynicism for the manner in which judgement would be rendered. This was contrasted with a relative "gang rape" mentality against a pro se plaintiff for the sole reason that our legal system is unable to provide attorneys who are available at an affordable price to represent citizens in defense of their home and property. This is a case of ample demonstration of the current failings of our legal system and the refusal of the lower courts to deal with the issue.

For example, the case of April 5, 1988, Richland County Court, Magistrate William T. Smith, the defendant, ignored that the jury was totally picked by one side. The Magistrate ignored the fact that the plaintiff had been refused to

present his case before the jury. In other words, the rather common-occurring phenomena came where the jury was given a picture with only one option and the essence of a two-sided case was denied the plaintiff. The plaintiff's second objections to the Magistrate's report and recommendation is a noteworthy analysis of the "clubhouse" or "good ol' boy" attorneys' approach to ignore the less scholarly presentation of a sincere and victimized American citizen who is being maltreated by lawyers. The Magistrate in court actually ignored these.

Summary Judgement was ordered before the second report was even in. The Magistrate ignored the reports of witnesses that said the Magistrate acted more like a prosecutor than a judge.

It is noteworthy in the court's

order, filed March 1, 1990, that the court adopted the Magistrate's clear misstatement of the plaintiff's position. The court stated that plaintiff was saying that any zoning ordinance was illegal and that clearly was not the case. The court ignored the fact that the zoning ordinance was never even before the court; that antique cars are not "junkyards" or "junk"; that all forms of due process had been violated. In other words, the court acted as an adversary and not as a fair adjudicator and certainly never considered the bulk of the major arguments.

QUESTIONS OF LAW

1. Can this court tolerate a "gang violation" type of adjudication below with an inadequate summary judgement, clearly unconsidered significant issues

of Constitutional violation, and a judicial advocacy's role in protecting other attorneys and judges, in the guise of a civil rights litigation.

2. Were substantial Constitutional issues raised as to illegal criminal proceedings below, a failure of due process in the administration of zoning ordinances, an improper adjudication that a longstanding grandfather's antique automobile restoration project can be converted by a snap of the fingers to a junkyard, and can an existing business of restoration of automobiles be wiped out without any compensation.

3. Did the court below give merely the appearance of justice rather than the substance and spirit of fair adjudication, thereby interfering with the plaintiff's rights under the First

Amendment to petition for redress of grievances, contrary to the oath of the Magistrate and judge below.

ARGUMENT OF LAW

This case is a shocking example of the Federal Judiciary falling short of fairness, proper judicial administration, and honoring the substance of the law.

1. The case below was handled by an unfair and adversarial Magistrate, granting Summary Judgement upon an inadequate pleading that did not challenge the Constitutional questions raised, and through procedures that ignored the layman's attempt to present fair Constitutional issues before the Court.

2. There was numerous unanswered allegations, verified by facts presented and a verified Complaint of

Constitutional violations, including a denial of due process and refusal of hearing concerning important property rights in the state court, irregularity of state court proceedings and improper police tactics on a zoning matter against a citizen with clear property rights, a total failure of every showing what the zoning ordinance held and did not hold and an illogical and imaginative conversion of an antique automobile restoration business of over 20 years standing into a "junkyard" without any factual showing or without any hearing below, and the destruction of an existing business lawfully maintained since 1952 by a zoning ordinance without any compensation as required by the Fifth and Fourteenth Amendments to the United States Constitution.

3. The case below was a travesty in affording pro se litigants even the appearance of justice contrary to the First Amendment of the United States Constitution guaranteeing the right to petition for redress of grievances.

A. The Atmosphere of Prejudice

The essence of due process before the federal courts is an atmosphere of fair adjudication.

The account traces itself to the fact that the very first lawyers were simply personal friends of the litigant, brought into court by him so that the litigant might "take counsel with them" before making decisions.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Rawley Patton, Plaintiff, vs. Charles C. Vardell, F.M. "Mike" Spearman Judge William T. Smith Deputy John Doudoukjian, Deputy Leroy Gadsen, and others involved in the conspiracy against the plaintiff, each in their individual capacities, Defendants.	CA No. 3:89-2280-6B ORDER ENLARGING TIME FOR DEFENDANTS TO ANSWER

Upon request of counsel for all Defendants, and for good cause shown, the time for Defendants to answer the Complaint to the Plaintiff or otherwise file responsible pleadings is hereby enlarged pursuant to Rule 6(b), Fed.R.Civ.P., from an original deadline of October 4, 1989 until November 1,

1989.

IT IS SO ORDERED.

Henry M. Herlong, Jr.
United States Magistrate

Columbia, South Carolina
September 28, 1989

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Rawley Patton, Plaintiff, vs. Charles C. Vardell, et al. Defendants.	ORDER ENLARGING TIME CA No. 3:89-2280-6B

Upon Motion of the Defendants, and for cause shown, the time for responding to the Request for a Temporary Restraining Order in the above-captioned civil action is enlarged until November 15, 1989.

AND IT IS SO ORDERED.

The Honorable Henry M. Herlong, Jr.
United States Magistrate

Columbia, South Carolina
October 2, 1989.

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Rawley Patton, Plaintiff, vs. Charles C. Vardell, et al. Defendants.	)	ORDER CA No. 3:89-2280-6B

A motion to dismiss or for summary judgement has been filed in this case that was brought originally by an individual who is without counsel. Because the plaintiff has no attorney, the Clerk is directed to send him by mail a copy of this Order, an explanation of summary judgement procedure, and a copy of pertinent extracts from Rule 12 and Rule 56 of the Federal Rules of Civil Procedure.

The plaintiff shall have a period of thirty-four (34) days from the date of this Order to file any material he wishes to file in opposition of the motion in accordance with the requirements explained in the Rules, and if he fails to respond adequately, the motion may be granted, thereby ending this case.[1] Careful attention should be given to the requirements of Rule 56(d) concerning the necessity for affidavits filed in opposition to summary judgement to be based on personal knowledge, to contain facts admissible in evidence, and to be executed by a person who would be competent to testify as to matters

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[1]This is one month plus four days mail time, and the time will not be enlarged unless highly persuasive reasons are submitted <u>under oath</u> to support motion to enlarge time.

contained in the affidavit if he were called to the witness stand. Affidavits or exhibits pertaining to matters that are not involved in this case will not be considered by the court, nor will affidavits that contain only conclusory statements or arguments of facts or law.

A person who is representing himself in federal court may submit a brief or memorandum containing argument if he desires to do so, but this is not required. However, submission of a brief, or even the filing of a reply to an answer or return, will not be sufficient alone to withstand a properly supported motion for summary judgement.

This Order is entered at the direction of the court.

_____
United States Magistrate
Dated: October 12, 1989

EXPLANATION OF SUMMARY JUDGEMENT PROCEDURE
(For plaintiffs or petitioners who do not have counsel)[2]

Most pro se litigants are prisoners who seek federal habeas corpus relief or relief or relief available under civil rights statutes, 42 U.S.C. §1983 et seq. Generally, the only issues federal courts entertain in such cases are alleged violations of rights secured by the Constitution. The Federal Rules of Civil Procedure apply in all civil rights cases, and the rules applicable to pleadings and motions apply for the most part in federal habeas cases started by state (or federal) prisoners.

When a defendant (or a respondent) moves or pleads for summary judgement under Rule 56, or sets up in a motion or pleading a defense that the plaintiff (or petitioner) has failed to state a claim upon which relief can be granted, he is arguing, in effect, that a constitutional claim has not been shown by the

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[1]This explanation, or one of similar import, is required by Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), which was a civil rights case. The same procedure applies in federal habeas corpus cases under Webb v. Garrison, No. 77-1855 (4th Cir., decided July 6, 1977).

plaintiff's complaint (or the petitioner's petition). If affidavits or other material are submitted by a defendant (or respondent) to support that defense, and if the court accepts such matter outside the pleading, the court rates the submission as a request for summary judgement under Rule 56 of the Federal Rules of Civil Procedure.

Whenever one or more affidavits or other material outside the pleading of a defendant (or respondent) are served on a pro se plaintiff (or a pro se petitioner), he cannot rest upon the allegations or denials of his own pleadings. He has a right to file one or more opposing affidavits or other exhibits, and indeed must do so if his action is to survive. If this is not done, the court may very well grant summary judgement against him. [This is true also if the parties are all represented by counsel.]

All affidavits submitted by pro se litigants must meet the standards required by Rule 56, which standards can be determined from the following quotation of a portion of Rule 56(e):

> "(e) Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated

therein."

If a pro se litigant does not fully understand what facts would be admissible, and who would be competent to testify, he should not withhold affidavits, for the court will determine whether these standards are met by his affidavit(s).

Under Rule 56(f), if a person served with affidavits cannot obtain opposing affidavits, he must submit to the court his own affidavit, stating why he cannot present by affidavit facts essential to justify his opposition to the facts set out in the affidavits served by the opposing party. Under Rule 56(g), all affidavits submitted to the court must be made in good faith (and, obviously, the facts sworn to must be true), and appropriate action will be taken by the court if it is satisfied that affidavits are presented in bad faith, or solely for the purpose of delay.[2]

UNITED STATES MAGISTRATE
Columbia, South Carolina

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[2]All affidavits submitted by all parties are submitted under penalties of perjury or subornation of perjury (18 U.S.C. §§ 1621 and 1622).

EXCERPTS FROM RULE 12 AND RULE 56
Federal Rules of Civil Procedure*

Rule 12(b) provides, in part:

**** If, on a notion asserting the defense ... to dismiss for failure of the pleading (this means the complaint, motion or petition) to state a claim upon which relief can be granted, matters outside the pleading (here meaning the answer or return) are presented to and not excluded by the court, the motion shall be treated as one for summary judgement and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent (that is, having some connection with the matter or matters in dispute) to such a motion by Rule 56."

Rule 56 provides, in part:

"(b) ... A part against whom a claim ... is asserted or a declaratory judgement is sought may, at any time, move with or without supporting affidavits for a summary judgement in his favor as to all or any part thereof."

"(e) *** When a motion for summary judgement (and this includes a Rule 12(b) motion to dismiss) is made and supported as provided in this rule, an adverse party (this is the plaintiff(s) or the petitioner(s)) may not rest upon the mere allegations or denials of his pleading (meaning the complaint, motion or the

petition), but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. (Emphasis added to show that specific facts are required, not conclusory allegations or argument.) If he does not so respond, summary judgement if appropriate, shall be entered against him."

See attached explanation of summary judgement procedure for a quotation of a part of Rule 56(3) as to the form and sufficiency of affidavits filed in support of or in opposition to a motion for summary judgement. Rule 56(3) also requires that copies of all papers referred to in an affidavit must be attached to the affidavit, and that such copies must be sworn to or certified.

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* The material contained within brackets is inserted by was of explanation of terms used, and is not a part of the Rules quoted. These extracts are prepared for the use of state and federal prisoners who submit complaints, petitions, or § 2255 motions to the United States District Court in their own behalf (pro se). The United States Court of Appeals for the Fourth Circuit has expressly or impliedly approved the application of Rules 12 and 56 to petitions for post-conviction relief in federal court pursuant to Title 28, United States Code, Sections 2254 and

2255, as well as to civil rights actions based on Title 42, United States Code, Sections 2254 and 2255, as well as to civil rights actions based on Title 42, United States Code, Sections 1983 and 1985.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Rawley Patton,
Plaintiff,

vs. NOTICE

Charles C. Vardell, et al.
Defendants.

CA # 3:89-2280-6B

Type of Case: Civil

TAKE NOTICE that a proceeding in this case has been set for the place, date and time set forth below:

Place:
United States District Court
1845 Assembly Street
Columbia, S.C. 29201

Room No: Courtroom #6

Date and Time:
Friday, December 1, 1989 at 10:00 a.m.

Type of Proceeding:

Motions Hearing / Status Conference

/s/ ANN A. BIRCH
US Magistrate or Clerk of Court

/s/ Stacey S. Wilson
(by) Deputy Clerk

November 21, 1989
Date
TO: The Honorable Henry M. Herlong, Jr.
United States Magistrate

x Rawley Patton
John C. Zilinsky
Vinton D. Lide
Court Reporter
Courtroom Deputy
Schedule
File

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Filed December 1, 1989
Entered 12/4/89

Rawley Patton, Plaintiff, vs. Charles C. Vardell, F.M. "Mike" Spearman, Judge William T. Smith, Deputy John Doudoukjian Deputy Leroy Gadsen and others involved in the deprivation and conspiracy against the plaintiff, each in their individual capacities, Defendants.	CA# 3:89-2280-6B MAGISTRATE'S REPORT AND RECOMMENDATION

The plaintiff, proceeding pro se, has brought complaint under 42 U.S.C. §

1983[3] against the Richland County State Magistrate and other employees of Richland County. The defendants have filed a motion for summary judgement which was heard before the undersigned on December 1, 1989.

At the hearing, the plaintiff stated that the basis of his complaint is founded pursuant to 42 U.S.C. § 1983[4] alleging that he has been damaged by the defendants acting under color of state

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[3]This case under 42 U.S.C. §1983 is before the undersigned United States Magistrate for all pretrial matters pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 19.00 DSC. Because of dispositive motion is the subject of this report and recommendation, revieww by the court is required.

[4]He has also alleged other inapplicable statues as a basis of jurisdiction.

law. He stated that the gist of his complaint involved the enforcement of county zoning ordinances against him as it involves the use of his property located in Richland County, South Carolina. The plaintiff has previously been convicted of one charge of maintaining an unlicensed vehicle on his property. He was tried before a jury in state magistrate's court for Richland County. He appealed that conviction to the Circuit Court of South Carolina, and his appeal was dismissed. He apparently attempted to appeal further to the State Supreme Court, and his appeal was dismissed. The parties agree that there are presently several warrants pending against him involving allegations that the plaintiff is in violation of the county's zoning ordinances.

The plaintiff claims that he has been damaged because the ordinances are unconstitutional in that they deprive him of the full use and enjoyment of his property without just compensation. He specifically alleges that the county is attempting to prohibit him from having unlicensed vehicles on his property. He further contends that the defendants have unlawfully taken pictures of his property, and he further contends that one lot which he owns has been improperly classified by the county zoning board. In addition, the plaintiff claims that pursuant to the numerous notices and summons which have been served upon him that his right to privacy has been violated. He further alleges that he has been falsely arrested without probably cause.

At the hearing, the plaintiff essentially stated that he does not believe that Richland County has the right to enforce the zoning ordinance which prohibits the unrestricted use of his property.

The defendants have filed affidavits setting forth with particularity the involvement of the defendants with the plaintiff as their actions pertain to enforcement of the zoning ordinance against the plaintiff. Apparently, the plaintiff has not challenged the zoning ordinance in the state courts except to raise the constitutionality of the ordinance during his previous conviction for maintaining an unregistered automobile on his property.

Defendants have cited the case of Euclid v. Ambler Realty Co., 272 U.S.

365, 71 L.Ed. 303, 475, S.Ct. 114 (1926) which is an often cited Supreme Court case standing for the premise that reasonable zoning ordinances do not involve an unjust taking without compensation. That case also stands for the proposition that although a zoning ordinance may involve a "taking" under the exercise of police power, a reasonable ordinance is not a taking which requires compensation under the constitution.

The plaintiff is attempting to obtain an injunction against the defendants for enforcing the county zoning ordinance. Additionally, he is attempting to obtain money damages from the defendants for their involvement in the enforcement of the ordinance. Plaintiff stated at argument that he does

not believe that any ordinance which restricts the use of one's property is constitutional. He, therefore, argues that the enforcement of an unconstitutional zoning ordinance should entitle him to damages against those who enforce the ordinance. His basic argument is clearly against the holding of Euclid, supra, which holds that a reasonable zoning ordinance is enforceable, and that although a zoning ordinance may involve a taking, it is a taking for which compensation is not required. Therefore, based on the materials submitted in support of the defendants' motion for summary judgement and the pleadings is this case, it is

RECOMMENDED that the defendants'

motion for summary judgement be granted.

Respectfully submitted,

/s/ Henry M. Herlong, Jr.
Henry M. Herlong, Jr.
United States Magistrate

December 1, 1989

Columbia, South Carolina

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Filed December 7, 1989
Entered 12/4/89

Rawley Patton, Plaintiff, vs. Charles C. Vardell, F.M. "Mike" Spearman, Judge William T. Smith, Deputy John Doudoukjian Deputy Leroy Gadsen and others involved in the deprivation and conspiracy against the plaintiff, each in their individual capacities, Defendants.	CA# 3:89-2280-6B ORDER

The plaintiff has moved for an enlargement of time to file objections to the report and recommendation of the

magistrate. The plaintiff has stated that he needs additional time because of the delay in receiving the report and recommendation. For good cause shown, it is hereby

ORDERED that the time in which the plaintiff may file objections to the report and recommendation of the magistrate is enlarged for a period of five days.

IT IS SO ORDERED.

/s/ Henry M. Herlong, Jr.
Henry M. Herlong, Jr.
United States Magistrate

December 1, 1989

Columbia, South Carolina

Filed: December 20, 1989
Entered: 12/20/89

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA, DIVISION

Rawley Patton, CA: 3:89-2280-6B

Plaintiff,

v. JUDGEMENT IN A CIVIL CASE

Charles C. Vardell, F. M. "Mike" Spearman, William T. Smith, Jr., John Doudoukjian, Leroy Gadsen, and others involved in the deprivation and conspiracy against the plaintiff, each in their individual capacities,

Defendants.

X - Decision by Court.
This action came to hearing before the Court. The Court have duly heard and adopted the Magistrate's Report and Recommendation,

It is ordered and adjudged that summary judgment is entered for the defendants Charles C. Vardell, F. M. "Mike" Spearman, William T. Smith, Jr., John Doudoukjian, Leroy Gadsen and others involved in the deprivation and conspiracy against the plaintiff, each in

their individual capacities.

/s/ ANN A. BIRCH
Clerk

(By) Deputy Clerk

December 20, 1989
Date

Filed: December 20, 1989
Entered: 12-20-89

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

RAWLEY PATTON,	)	CA# 3:89-2280-6B
Plaintiff	)	
v.	)	ORDER
CHARLES C. VARDELL, F.M. "MIKE" SPEARMAN, WILLIAM T. SMITH, JR., JOHN DOUDOUKJIAN, LEROY GADSDEN, AND OTHERS INVOLVED IN THE DEPRIVATION AND CONSPIRACY AGAINST THE PLAINTIFF, EACH IN THEIR INDIVIDUAL CAPACITIES,	)	
Defendants.	)	

This action, brought pro se pursuant to 42 U.S.C. 1983, comes before the court with the Report and Recommendation of the United States Magistrate. Plaintiff's

constitutional claims derive from the enforcement by defendants of certain Richland County zoning ordinances against him. He contends that Richland County has unconstitutionally attempted to prevent him from having certain unlicensed automobiles on his property, and that defendants have unlawfully taken pictures of his property. He seeks to enjoin the defendants from enforcing the pertinent provisions of the county zoning ordinance against him and also seeks money damages for their enforcement to the ordinance.

Based upon review of the matter, the Magistrate concluded that Euclid v. Ambler Realty Company, 272 U.S. 365 (1926) and its progeny recognized that although zoning ordinances may involve a type of taking, such taking does not

require compensation under the United States Constitution so long as the ordinance is reasonable. Implicitly concluding that the zoning ordinance herein, which forbids the storage of unlicensed vehicles in residential areas unless they are enclosed by a building, is reasonable, the magistrate recommends that defendants' Motion for Summary Judgment be granted.

Plaintiff has submitted Objections to the Magistrate's Report and Recommendation which essentially restate his basic position. They do nothing to convince this court that the Magistrate's Report is factually or legally in error.

Thus, upon consideration of the case, the Magistrate's Report and Recommendation is hereby adopted and made a part of this Order by specific

reference. On the basis set out therein, defendants' Motion for Summary Judgment is hereby granted.

AND IT IS SO ORDERED.

/s/ CHARLES E. SIMONS, JR.
UNITED STATES DISTRICT JUDGE

AIKEN, S.C.
December 18, 1989

Filed: March 1, 1990
Entered: 3/1/90

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

CIVIL ACTION NO. 3:89-2280-6b

RAWLEY PATTON, Plaintiff, v. CHARLES C. VARDELL, ET AL., Defendants.	)	O R D E R

This pro se action alleging constitutional deprivations resulting from the enforcement of certain Richland County Zoning Ordinances comes before the court on plaintiff's Motion for Reconsideration of this court's Ordered

filed December 20, 1989. That Order granted defendants' Motion for Summary Judgment. Plaintiff's Motion for Reconsideration urges that this court did not consider his Second Objections to the Magistrate's Report and Recommendation. Plaintiff is entirely correct that this court did not have his Second Objection when it adopted the Magistrate's Report and Recommendation in the Order filed on December 20, 1989.

After receiving the Magistrate's Report and Recommendation, plaintiff sought an extension of five days in his Order filed December 7, 1989. On December 12 , 1989, plaintiff filed his original Objection to the Magistrate's Report and Recommendation, and the entire file was forwarded by mail to this office. This court considered the matter

and signed its Order granting Summary Judgment on December 18, 1989. The file was mailed back to Columbia along with the Order. Meanwhile, on December 15, 1989, plaintiff had filed his Second Objection to the Magistrate's Report and Recommendation. The Second Objection was mailed to this court by the Clerk's Office on December 18, 1989, and received here on December 21, 1989.

Plaintiff gave no indication in his First Objection that he intended to file additional Objections. This court did not consider itself compelled to vacate the Order which it had already signed and filed when plaintiff's Second Objection was received in these chambers on December 21, 1989. Even so, this court reviewed plaintiffs's Second Objection to convince it that the Magistrate's Report

and Recommendation was erroneous, and it has not changed that opinion.

Plaintiff steadfastly insists that the Constitution and Supreme Court case law forbid any restrictions on the use of private property unless just compensation is paid for the restrictions. That is simply not the law. Reasonably drafted zoning restrictions are constitutional and do not require payment of compensation so long as they do not deprive a property owner of all use of his property. Plaintiff has never alleged that he has been deprived of all use of his property. He contends only that he is forbidden his preferred use of the property.

Thus, upon consideration of plaintiff's Motion for Reconsideration, this court grants the Motion in part,

insofar as the court has reviewed and reconsidered plaintiff's Second Objection. The court declines, however, to alter the ruling set out in its Order filed December 20, 1989, and that Order shall remain in full force and effect.

AND IT IS SO ORDERED.

/s/ Charles E. Simons, Jr.
UNITED STATES DISTRICT JUDGE

Aiken, S. C.
February 27, 1990

Filed: March 19, 1990
Entered: 3/20/90

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

CIVIL ACTION NO. 3:89-2280-6B

RAWLEY PATTON,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	O R D E R
	)	
CHARLES C. VARDELL, ET AL.,	)	
	)	
	)	
Defendants.	)	

This pro se actions comes before the court on receipt of plaintiff's filing entitled "Challenged to and Repudiation of the Unlawful 'Order' of February 27, 1990." As the title of his submission suggest, plaintiff's emphatically objects

to this court's earlier order. Plaintiff's filing, however, contains nothing which persuades this court that its earlier Ordered was erroneous.

This court has construed plaintiff's Challenge and Repudiation as a Motion to Reconsider pursuant to Fed.R.Civ.P. 59. On that basis, plaintiff's Motion is hereby denied.

Plaintiff is advised that if he seeks relief from his court's Orders, he must do so by filing a timely appeal of this court's rulings. He must file Notice of Appeal with the Clerk of this court within thirty (30) days after the date of entry of the judgment or Order appealed from. See Rules 3 and 4, Federal Rules of Appellate Procedure. Plaintiff in further advised that any appeal of this court's rulings should be

made to the Fourth Circuit Court of Appeals, which sits in Richmond, Virginia.

So that plaintiff will have the maximum opportunity to make a timely filing of his Notice of Appeal, the clerk of this court is directed to process this Order and supply it to plaintiff on an expedited basis.

AND IT IS SO ORDERED.

/s/ Charles E. Simons, Jr.
UNITED STATES DISTRICT JUDGE

Aiken, S. C.
March 16, 1990

Filed: March 29, 1990
Entered: 3/29/90

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

CIVIL ACTION NO. 3:89-2280-6B

RAWLEY PATTON,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	O R D E R
	)	
CHARLES C. VARDELL, ET AL.,	)	
	)	
Defendants.	)	

The pro se matter again comes before the court on yet another submission by plaintiff. Plaintiff's most recent submission, filed March 26, 1990, in his Challenge to the Repudiation of the Unlawful "Order" of March 16, 1990.

In the Order of which plaintiff complains, this court advised him that any further appeal of this court's Orders must be made to the Fourth Circuit Court of Appeals in Richmond, Virginia. Plaintiff was also advised that if he fails to make a timely appeal, his right to seek appellate relief may be foreclosed.

Instead of pursuing an appeal, plaintiff continues to waste both his time and the court's previous rulings and/or reassignment of this case to another judge. Plaintiff's present Challenge sets out no basis for altering this court's previous Orders. For that reason, it is denied.

Plaintiff is again advised that relief from this court's Orders can only be achieved by pursuing a successful

appeal to the Fourth Circuit. Further filings of frivolous challenges in this court will be of no benefit to plaintiff.

As noted in this court's Order filed March 19, 1990, plaintiff must initiate any appeal be making a timely filing of his Notice of Appeal with the Clerk of this Court. The clerk is directed to reject any further attempts by plaintiff to file documents seeking reconsideration by this court of its earlier Orders. Plaintiff is advised that if he neglects his opportunity to appeal and instead continues to make frivolous filings with this court, the court may be compelled to invoke its contempt power.

AND IT IS SO ORDERED.

/s/ Charles E. Simons, Jr.
UNITED STATES DISTRICT JUDGE

Aiken, S. C.
March 28, 1990

UNPUBLISHED

APPENDIX "B"

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 90-3052

RAWLEY PATTON,

Plaintiff - Appellant,

verses

CHARLES C. VARDELL;
F. M. MIKE SPEARMAN;
WILLIAM T. SMITH,
Judge; JOHN DOUDOUKJIAN,
Deputy; LEROY GADSEN,
Deputy,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Charles E. Simons, Jr., Senior District Judge. (CA-89-2280-3-6B)

Submitted: August 27, 1990
Decided: September 28, 1990

Before SPROUSE and WILKINS, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Rawley Patton, Appellant Pro Se. Vinton DeVane Lide, LIDE, POTTS & MONTGOMERY, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.
See I.O.P. 36.5 and 36.6.

PER CURIAM:

Rawley Patton noted this appeal outside the 30-day appeal period established by Fed. R. App. P. 4 (a) (1), and failed to move for an extension of the appeal period within the additional 30-day period provided by Fed. R. App. P. 4 (a) (5).* The time periods established by Fed. R. App. P. 4 are "mandatory are jurisdictional." Browder v. Director,

Dep't of corrections, 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)). Appellant's failure to note a timely appeal or obtain an extension of the appeal period deprives this Court of jurisdiction to consider this case. We therefore dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

DISMISSED

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*Patton filed his notice of appeal on April 9, 1990, which was more than 30 days after the court entered its March 1, 1990, ordering denying his timely Fed. R. Civ. P. 59 motion.

FILED: October 23, 1990

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 90-3052

RAWLEY PATTON

Plaintiff - Appellant,

versus

CHARLES C. VERDELL;
F.M.MIKE SPEARMAN;
WILLIAM T. SMITH, Judge,
JOHN DOUDOUKJIAN, Deputy;
LEROY GADSEN, Deputy,

Defendants - Appellees

ORDER

Appellant has filed a pro se petition for rehearing and

suggestion for rehearing in banc.

The Court grants the petition for rehearing and will

consider the appeal on the merits. There was no request by a

member of this Court for a poll of the Court on the suggestion for rehearing in banc.

For the Court

/s/ John M. Greacen
CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 90-3052

RAWLEY PATTON,

Plaintiff - Appellant,

verses

CHARLES C. VARDELL;
F. M. MIKE SPEARMAN;
WILLIAM T. SMITH, Judge;
JOHN DOUDOUKJIAN, Deputy;
LEROY GADSEN, Deputy,

Defendants - Appellees.

On Petition for Rehearing.

Submitted: November 6, 1990
Decided: December 13, 1990

Before SPROUSE and WILKINS, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Rawley Patton, Appellant Pro Se. Vinton DeVane Lide, LIDE, POTTS & MONTGOMERY, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.
See I.O.P. 36.5 and 36.6.

PER CURIAM:

Rawley Patton appeals from the district court's order denying relief under 42 U.S.C. § 1983. Our review of the record and the district court's opinion accepting the recommendation of the magistrate discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court. Patton v. Vardell, CA-89-2280-3-6B (D.S.C. Mar. 1, 1990). We dispense with oral argument because the facts and

legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

FILED: January 8, 1991

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 90-3052

RAWLEY PATTON

Plaintiff-Appellant

v.

CHARLES C. VARDELL; F.M. MIKE SPEARMAN; WILLIAM T. SMITH, Judge; JOHN DOUDOUKJIAN, Deputy; LEROY GADSEN, Deputy;

Defendants-Appellees

On Petition for Rehearing with Suggestion for Rehearing in Banc

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The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a pole on the suggestion for

rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

/s/ John M. Greacen
CLERK

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FILED: January 15, 1991

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 90-3052

Patton v. Vardell

M A N D A T E

The judgement of this court dated 12/13/90 takes effect today.

JOHN M. GREACEN
CLERK

APPENDIX C

SUPREME COURT OF THE UNITED STATES

No. A-734

Rawley Patton,
Petitioner

vs.

Charles C. Vardell, et al.

ORDER

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including May 8, 1991.

/s/ William H. Rehnquist
Chief Justice of the United States

Dated this 5th
day of April, 1991.